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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,822	03/03/2004	John H. Penny III	24370.00	1503

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/790,822	Applicant(s) PENNY ET AL.	
	Examiner Patricia L. Nordmeyer	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 15-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/3/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1 - 14 in the reply filed on December 1, 2005 is acknowledged. The traversal is on the ground(s) that Applicants contend that they should be entitled to a consideration of a reasonable number of related embodiments falling within the scope of a generic inventive concept. This is not found persuasive because as shown by the restriction requirement dated November 4, 2005, the search for the method is located in a different class and is better searched by one skilled in the art of making the air freshener.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 2 – 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 2 - 14 recite the limitation "sticker/decal air freshener system" in claim 1. There is insufficient antecedent basis for this limitation in the claim as claim 1 fails to recite the limitation of a system.

Correction/clarification is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugimoto (USPN 4,419,396).

7.

Sugimoto discloses a decal air freshener (Column 1, lines 5 - 10) comprising a decal having a plastic sheet (Column 2, line 49; Figure 2, #1) with a paint layer depicting a decorative item that matches a scented material (Column 3, lines 1 – 4) having a primary adhesive layer (Figure 2, #2; Column 2, line 50), a release backing board (Figure 2, #3; Column 2, line 51) and said decal having a scented material, which dissipates into the surrounding air and freshens the air (Column 2, lines 59 – 65) as in claims 1 – 3. Regarding claims 4 – 6, the paint layer contains a scent material acting as an air freshener (Column 2, lines 59 – 65), wherein the scent material comprises a scented gel or liquid potpourri (Column 3, lines 41 – 65). With regard to claim 8, the freshener further comprises a scented foam material adhered to at least a portion of said paint layer of said decal (Column 3, lines 36 – 40).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto in view of Spector (USPN 4,283,011).

Sugimoto discloses a decal air freshener (Column 1, lines 5 - 10) comprising a decal having a plastic sheet (Column 2, line 49; Figure 2, #1) with a paint layer depicting a decorative item that matches a scented material (Column 3, lines 1 - 4) having a primary adhesive layer (Figure 2, #2; Column 2, line 50), a release backing board (Figure 2, #3; Column 2, line 51) and said decal having a scented material, which dissipates into the surrounding air and freshens the air (Column 2, lines 59 - 65). The paint layer contains a scent material acting as an air freshener (Column 2, lines 59 - 65), wherein the scent material comprises a scented gel or liquid potpourri (Column 3, lines 41 - 65). The freshener further comprises a scented foam material adhered to at least a portion of said paint layer of said decal (Column 3, lines 36 - 40). However, Sugimoto fails to disclose a tear-away or otherwise sealed bag so as to prevent the dissipation of the scent during storage and the scented foam material being refreshed with a spray scent.

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Spector teaches a tear-away or otherwise sealed bag so as to prevent the dissipation of the scent during storage (Column 3, lines 4 – 10) for the purpose of restricting the release of the scent during storage (Column 3, lines 8 – 10).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the sealed bag in Sugimoto in order to restrict the release of the scent during storage as taught by Spector.

With regard to the scented foam material being refreshed with a spray scent, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since both Spector and Sugimoto are made with materials that may absorb scents, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have sprayed the articles with a refresher scent.

10. Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto in view of Spector as applied to claims 7, 9 and 10 above, and further in view of Huebner et al. (USPN 3,494,505).

Sugimoto, as modified with Spector, discloses the claimed decal air freshener except for

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the air freshener comprising a scented tape segment having an adhesive layer removably attached to said paint layer.

Huebner et al. teach an air freshener comprising a scented tape segment having an adhesive layer removably (Column 2, lines 25 – 34) that is applied to a surface (Column 2, lines 38 – 42) for the purpose of providing a sample of a perfume while avoiding any loss or deterioration of scent or contamination prior to sampling (Column 1, lines 59 – 63).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the tape segment that is adhered to a surface in the modified Sugimoto in order to provide air freshener comprising a scented tape segment having an adhesive layer removably attached to said paint layer as taught by Huebner et al.

11. Claims 12 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto in view of Spector and Huebner et al. as applied to claim 11 above, and further in view of Gadoua (USPN 4,744,514).

Sugimoto, as modified with Spector and Huebner et al., discloses the claimed decal air freshener except for the scented tape segment having a plastic mesh outer layer having scented gel within the interstices of the plastic mesh and the scented tape segment being shaped to conform with the decal.

Gadoua teach a plastic mesh outer layer (Figure 2, #16) having scented gel within the interstices of the plastic mesh (Column 2, lines 29 – 34) and the scented tape segment being shaped to conform with the decal (Figures 1 and 2) for the purpose of providing a stronger and longer lasting application of scented fluid (Column 1, lines 13 – 17).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the plastic mesh in the shape of the decal in the modified Sugimoto in order to provide a stronger and longer lasting application of scented as taught by Gadoua.

With regard to the scented tape segment being removable and replaceable with a fresh scented tape segment, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since both Spector and Sugimoto are made with materials that may absorb scents, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a refresher scent.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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U.S. Patent No. 4,814,212 to Spector and U.S. Patent No. 4,874,129 to DiSapio et al. are cited to show the state of the art with regard to fragrance release items, such as air fresheners, that are in the form of articles that are adhered to a variety of surfaces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
pln

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
11/12

12/22/05